



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

**999 18<sup>TH</sup> STREET- SUITE 300**

**DENVER, CO 80202-2466**

**Phone 800-227-8917**

**<http://www.epa.gov/region08>**

Ref: 8ENF-W-NP

**CERTIFIED MAIL:**  
**RETURN RECEIPT REQUESTED**

Ms. Coralie Allison  
Lake County Charlo Sewer District  
P.O. Box 62  
Charlo, MT 59824

Re: Administrative Order for Compliance  
under sections 308 and 309 (a) of the Clean  
Water Act, 33 U.S.C. §§ 1318 and 1319(a)

Dear Ms. Allison:

Enclosed is an Administrative Order for Compliance ("Order"), which the United States Environmental Protection Agency ("EPA") Region 8 is issuing to Lake County Charlo Sewer District ("Charlo") for violating the Clean Water Act, as amended, 33 U.S.C. § 1251 *et seq.* (the "Act"). EPA has issued the Order under the authority of sections 308 and 309(a)(3) of the Act, 33 U.S.C. §§ 1318 and 1319(a)(3).

The Order finds that Charlo has violated its National Pollutant Discharge Elimination System ("NPDES") permit, which EPA issued to Charlo under section 402 of the Act, 33 U.S.C. § 1342. The Order directs Charlo to submit a plan and schedule to EPA for modifying its sewage treatment facilities in order to achieve compliance with its NPDES permit.

The Act requires the EPA to take all appropriate enforcement actions necessary to secure prompt compliance with the Act and any orders issued thereunder. Section 309 of the Act provides a variety of possible enforcement actions, including filing a civil or criminal action, filing an administrative penalty action, and/or issuing an order for compliance.



Please be advised that the issuance of this Order does not preclude the initiation of administrative penalty proceedings or initiation of civil or criminal actions in U.S. District Court under sections 309(b), (c) and (g) of the Act for the violations cited in the Order.

Please review the Order carefully. Failure to comply with the requirements of the Order shall constitute a violation of the Order.

The Order is to become effective thirty days after receipt. The purpose of allowing this thirty-day period is to provide Charlo the opportunity to confer with EPA about the Order. If you would like a conference with EPA, or if you have any questions regarding this letter, the enclosed Order, or any other matters pertinent to Charlo's compliance with the Act, the most knowledgeable people on my staff are Rosemary Rowe, Montana Operations Office, at (406) 457-5020 or (866) 457-2690, or Peggy Livingston, Enforcement Attorney, at (303) 312-6858.

Sincerely,

Aundrey C. Wilkins for/

Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosure

cc:  
D. Fred Matt, Chairman  
Confederated Salish & Kootenai Tribes  
P.O. Box 278  
Pablo, MT 59855-0278



**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

In the Matter of:	)	
	)	ADMINISTRATIVE ORDER
Lake County Charlo Sewer District,	)	FOR COMPLIANCE
	)	
Respondent.	)	Docket No. <b>CWA-08-2005-0006</b>

**INTRODUCTION**

- I.This Administrative Order for Compliance (“Order”) is authorized by Congress in sections 308 and 309(a)(3) of the Federal Water Pollution Control Act, commonly known as the Clean Water Act (the “Act” or the “CWA”), 33 U.S.C. § 1318 and 1319(a)(3).
- II.EPA alleges that the Lake County Charlo Sewer District (“Respondent” or “Charlo”) has violated the Act, as more fully explained below. EPA orders the Respondent to take the corrective actions outlined below.
- III.The undersigned U.S. Environmental Protection Agency (“EPA”) official has been properly delegated the authority to issue this Order.
- IV.The following Findings of Fact and Law apply to all times relevant to this action and to each count of this Order. Unless otherwise noted, each statutory or regulatory provision has been in effect at all times relevant to this proceeding.

**FINDINGS OF FACT AND LAW**

- V.In order to restore and maintain the integrity of the nation's water, section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person into navigable waters, unless authorized by certain other provisions of the Act, including section 402 of the Act, 33 U.S.C. § 1342.
- VI.Section 402 of the Act, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (“NPDES”) program, under which EPA and, upon receiving authorization from EPA, states may issue permits authorizing discharges into navigable waters, subject to specific terms and conditions.
- VII.The Respondent is a “person” as that term is defined in section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

VIII. Effective October 1, 2001, the EPA issued an NPDES permit, Permit No. MT-0022551 (the "Permit"), authorizing the Respondent to discharge treated effluent from the Respondent's wastewater treatment facility (the "Facility") to a tributary of Mission Creek, in accordance with the conditions set forth in the Permit.

IX. Mission Creek is a tributary of the Flathead River.

X. The Flathead River is an interstate water and therefore a "navigable water" and part of the "waters of the United States," as defined by section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2, respectively.

XI. As a tributary of the Flathead River, Mission Creek is a "navigable water" and part of the "waters of the United States," as defined by section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2, respectively.

XII. The Facility is located on the Flathead Indian Reservation in northwestern Montana.

XIII. Sections I.C of the Permit includes effluent limits for fecal coliform, to become effective, according to § I.D of the Permit, three years from the date of issuance of the permit.

XIV. Section I.D of the Permit includes a schedule for the Respondent to complete various milestones in funding, designing, and installing equipment to treat fecal coliform.

XV. According to the compliance schedule in § I.D of the Permit, the Respondent was to have obtained preliminary funding and conducted preliminary design work for the disinfection equipment no later than 12 months from permit issuance and, with the next Discharge Monitoring Report submittal, to report to EPA that this milestone had been met.

XVI. The Respondent did not report to EPA on its progress in obtaining preliminary funding or conducting design work for the disinfection equipment within 12 months from permit issuance.

XVII. According to the compliance schedule in § I.D of the Permit, the Respondent was to have completed final engineering design and planning for the disinfection equipment no later than 24 months from permit issuance and, with the next Discharge Monitoring report submittal, to report to EPA that this milestone had been met.

XVIII. The Respondent did not report to EPA on its progress in preparing final engineering design and planning for the disinfection equipment within 24 months from permit issuance.

XIX. According to the compliance schedule in § I.D of the Permit, the Respondent was to have installed and conducted a "shakedown" of the disinfection equipment no later than 30

months from permit issuance.

XX. The Respondent did not install the disinfection equipment or conduct a “shakedown” of that equipment within 30 months from permit issuance.

XXI. On April 21, 2004, representatives of EPA inspected the Respondent's Facility.

XXII. The EPA's April 21, 2004, inspection confirmed that the Respondent had failed to meet the 30-month deadline for installing and conducting a “shakedown” of the disinfection equipment.

XXIII. Section I.C.3 of the Permit requires, among other things, that the Respondent inspect its facility at least weekly and record the findings of each inspections in a logbook, as described in more detail in the Permit.

XXIV. The EPA's April 21, 2004, inspection found that the Respondent had not been recording weekly inspections in the logbook.

XXV. Section I.C.1 of the Permit requires, among other things, that the quality of the effluent discharged by the Facility shall, at a minimum, meet the following requirements: a 30-day average limitation for biological oxygen demand (“BOD<sub>5</sub>”) of no more than 30 milligrams per liter (“mg/l”), a 7-day average limitation for BOD<sub>5</sub> of no more than 45 mg/l, a 30-day average limitation for total suspended solids (“TSS”) of no more than 100 mg/l, and a 7-day average limitation for TSS of no more than 135 mg/l.

XXVI. Section I.C.2 of the Permit requires, among other things, that the Respondent is to monitor certain constituents, including but not limited to BOD<sub>5</sub>, for each month during which a discharge occurs.

XXVII. Section II.D of the permit requires that effluent monitoring results taken during the previous month shall be summarized and reported on Discharge Monitoring Report Forms, postmarked no later than the 28th day of the month following the completed reported period.

XXVIII. Discharge Monitoring Reports (“DMRs”) submitted to EPA by the Respondent indicate that effluent Respondent from the Facility exceeded the effluent limitations for BOD<sub>5</sub> and TSS for the months listed below:

Month	BOD <sub>5</sub> 30-day average limit = <b>30 mg/l</b>	BOD <sub>5</sub> 7-day average limit = <b>45 mg/l</b>	TSS 30-day average limit = <b>100 mg/l</b>	TSS 7-day average limit = <b>135 mg/l</b>

May 2002	83	83	742	742
October 2001	32	–	--	–

#### **COUNT 1 - Violation of 12-Month Milestone**

XXIX. The Respondent did not report to EPA on the Respondent's progress in obtaining preliminary funding or conduct design work for the disinfection equipment within 12 months from permit issuance, in violation of § I.D of the Permit.

#### **COUNT 2 - Violation of 24-Month Milestone**

XXX. The Respondent did not report to EPA on the Respondent's progress in completing final engineering design and planning for the disinfection equipment within 24 months from permit issuance, in violation of § I.D of the Permit.

#### **COUNT 3 - Violation of 30-Month Milestone**

XXXI. The Respondent did not install the disinfection equipment or conduct a "shakedown" of that equipment within 30 months from permit issuance, in violation of § I.D of the Permit.

#### **COUNT 4 - Violations of BOD<sub>5</sub> Effluent Limits**

XXXII. The effluent Respondent discharged from the Facility exceeded the maximum allowable 30-day average concentration of BOD<sub>5</sub> in October of 2001 and May of 2002, and the maximum allowable 7-day average concentration of BOD<sub>5</sub> in May of 2002, in violation of § I.C.1 of the Permit.

#### **COUNT 5 - Violations of TSS Effluent Limits**

XXXIII. The effluent Respondent discharged from the Facility exceeded the maximum allowable 7-day and 30-day average concentrations of TSS in May of 2002, in violation of § I.C.1 of the Permit.

#### **COUNT 6 - Failure to Report BOD<sub>5</sub> Sampling**

XXXIV. The Respondent failed to report to EPA results of sampling for BOD<sub>5</sub> for the month of October 2003, in violation of § II.D of the Permit.

#### **COUNT 7 - Failure to Submit Discharge Monitoring Report**

XXXV.The Respondent failed to submit a Discharge Monitoring Report for the month of March 2003, in violation of § II.D of the Permit.

### **COUNT 8 - Failure to Log Weekly Inspections**

XXXVI.The Respondent failed to maintain a logbook recording information obtained during weekly facility inspections, in violation of § I.C.3 of the Permit.

### **ORDER**

Under the authorities of sections 308 and 309 of the Act, 33 U.S.C. §§ 1318 and 1319, EPA orders the Respondent as follows:

XXXVII.No later than 10 days after receiving this Order, the Respondent shall submit to EPA all engineering reports and plans relating to any planned, ongoing, or completed upgrades of its facility as of the date of this Order.

XXXVIII.No later than 30 days after receiving this Order, the Respondent shall submit to EPA for review and approval a plan and schedule (Plan) for modifying its sewage treatment facilities in a manner that will achieve compliance with all requirements of the Permit.

XXXIX.EPA will review the Plan and approve it, approve it with modifications, or reject it with comments. If EPA rejects the Plan, the Respondent shall, within fifteen (15) calendar days of receipt of EPA's rejection letter, submit a revised Plan that corrects the deficiencies identified by EPA.

XL.Upon approval by EPA, the Plan will be incorporated into this Order. Any non-compliance with the EPA-approved Plan shall be deemed a failure to comply with this Order and subject to EPA enforcement.

XLI.The concentration of BOD<sub>5</sub> in any effluent the Respondent discharges from the Facility may not exceed 45 mg/l as a 30-day average, or 65 mg/l as a 7-day average.

XLII.The concentration of TSS in any effluent the Respondent discharges from the Facility may not exceed 100 mg/l as a 30-day average, or 65 mg/l as a 7-day average.

XLIII. This Order does not constitute a waiver or modification of the terms and conditions of the Permit or of any other legal responsibility or liability of the Respondent. The Permit will remain in full force and effect, unless and until modified by EPA in accordance with the Act and 40 C.F.R. part 124. EPA retains the right to initiate proceedings to modify the Permit as appropriate. The Respondent will submit all appropriate applications for modifications as reasonably requested by EPA to reflect the intent of this Order.

#### **OTHER PROVISIONS**

XLIV. EPA regulations protect confidential business information. See 40 C.F.R. part 2, subpart B. If Respondent asserts a business confidentiality claim for information required to be submitted under this Order, Respondent shall provide such information to EPA and clearly indicate what portion(s) of this information the Respondent wishes to be considered confidential. EPA will determine if any information the Respondent has designated for confidential treatment meets the criteria in 40 C.F.R. § 2.208 for being treated as confidential. Unless Respondent asserts a confidentiality claim at the time the information is submitted, EPA may make the information available to the public without further notice to the Respondent.

XLV. All written notices and reports required by this Order shall be sent to:

Rosemary Rowe (8MOO)  
U.S. EPA Region 8 Montana Office  
Federal Office Building  
10 West 15<sup>th</sup> Street, Suite 3200  
Helena, MT 59626

XLVI. Any failure to comply with the requirements of this Order shall constitute a violation of this Order and may subject the Respondent to penalties as provided under § 309 of the Act, 33 U.S.C. § 1319.

XLVII. This Order does not constitute a waiver of or election by EPA to forego any civil or criminal action to seek penalties, fines or other relief under the Act. The Act authorizes EPA to seek civil penalties of up to \$32,500 per day for each violation of the Act. 33 U.S.C. § 1319(d); 40 C.F.R. part 19. EPA may also seek fines and/or imprisonment for knowing or negligent violations of the Act. 33 U.S.C. § 1319(c).

XLVIII. This Order shall become effective immediately upon signature.

Date: 11/22/04

By: Aundrey C. Wilkins for/  
Carol Rushin  
Assistant Regional Administrator



**THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE  
ON DECEMBER 3, 2004.**

